

ORANGE Coalition

Scottsdale Charter Amendment Recommendations

Article 1. Section 3 – Powers of the City

The city shall have all the powers granted to municipal corporations and to cities by the constitution and laws of this state and by this charter, as amended, together with all the implied powers necessary to carry into execution all the powers granted, provided that all such powers are subject to and limited by the provisions of this charter to wit:

A. The city may acquire, by purchase, gift, devise, lease, or eminent domain, property for any public purpose, within or without its corporate limits, in fee simple or any lesser interest or estate, provided that in the case of eminent domain the taking of the property must be necessary for an actual public purpose. Upon acquisition, the city may sell, lease, mortgage, hold, manage and control such property as public interests may require. In the case of eminent domain, property necessary for a public purpose “public purpose” is defined as property that the condemning entity will design, construct and/or maintain to serve the general public including, but not limited to, public streets, parks, libraries, public safety buildings, schools, municipal buildings, and other similar uses.

Arizona State Constitution (article 2, section 17) declares in no uncertain terms that private property shall not be taken from one private owner for another private use or for the benefit of another private entity. Furthermore, the taking of private property by the city for the potential benefit of another private entity and/or the generation of additional tax revenue does not constitute a public purpose. The limitation on the use of eminent domain is that neither the city nor a city-affiliated agency may exercise the power of eminent domain to take private property from a private entity or enterprise, landowner, rancher or farmer for the purpose of conveying the property to a third party or making the property available for the conduct of any commercial or residential development.

Prior to initiating an eminent domain action, the city must exhaust any and all options to negotiate just compensation with the private property owner. Just compensation is a constitutionally guaranteed right of property owners to receive payment for property taken by eminent domain that places the owner in as good a position financially as before the taking; just compensation is defined as the fair market value of the property taken, plus any incidental damages suffered as a result of the taking and incidental expenses such as attorney and expert fees. In addition, before the City Council may pass an ordinance authorizing the use of eminent domain, the city must obtain an independent, third-party fair market value appraisal of the property in question as part of a good-faith attempt to negotiate just compensation. The city must provide a copy of the appraisal to the property owner before beginning negotiations.

L. To provide for the protection, development, enhancement, storage, transportation and replenishment of the water supply, including but not limited to groundwater recharge, for the benefit of the City of Scottsdale, both within and without its boundaries, in a manner which respects any and all possible uses of private property, including the potential highest and best use of the real property, as legal rights of the owner of record. Further, if it chooses to exercise such power, the city shall furnish such services through a process of transparent competitive bidding, which is open to private, city departmental or governmental entities who offer to provide water services. The city shall not prohibit or interfere with otherwise lawful private contracts between private persons for services relating to the protection, development, enhancement, storage, transportation and replenishment of the water supply.

M. To provide for the collection, transportation, disposition and regulation of wastewater and effluent, and to acquire, construct, operate and maintain wastewater and effluent treatment and management facilities, including the authority to enter into contracts therefore, levy and collect fees and charges, require licenses, accept grants, purchase and sell recovered resources, and to impose criminal penalties for the unlawful disposal of wastewater and effluent. Further, if it chooses to exercise such power, the city shall furnish such services through a process of transparent competitive bidding, which is open to private, city departmental or governmental entities who offer to provide for the disposal of wastewater and

effluent. The city shall not prohibit or interfere with otherwise lawful private contracts between private persons for services relating to the collection, transportation and disposition of wastewater and effluent.

Article 12. Section 2 -- Establishment of Municipally Owned and Operated Utilities

The city shall have the power to own and operate any public utility, to construct and install all facilities that are reasonably needed, and to lease or purchase any existing utility properties used or useful to public service, provided the owners of any utility properties agree to such lease or purchase. The city may also furnish service to adjacent and nearby territories which are not served by a privately owned utility and which may be conveniently and economically served by the municipally owned and operated utility, subject to the limitations of the provisions of the general laws of this state. Prior to entering into negotiations for the acquisition of a privately owned utility, the council must provide by ordinance for the establishment of a municipally-owned utility and provide for its regulation and control and the fixing of rates to be charged. The council may by ordinance provide for the extension, enlargement or improvement of existing municipally-owned utility, and provide reasonable reserves for such purpose. The city can acquire private utility property only if the private entity owning the utility property agrees to lease or sell, or if the city exercises the power of eminent domain in accordance with the provisions of this charter and state law. Before passing an ordinance or taking any other action to acquire private utility property through eminent domain, the city must obtain an order from the agencies of state government having jurisdiction over the private utility's operation determining that the private utility is unable or unwilling to provide adequate service.

Article 13. New Sections -- Land Use Regulation that Respect Private Property Rights

A. In any city action regarding private property, such as zoning or regulation of how land may be used, the city shall recognize any and all the possible uses of the property, including the potential highest and best use of the real property, as legal rights of the owner of record.

B. Waivers of rights of claims and covenants not to sue under the 2007 Private Property Protection Act (A.R.S. §12-1134 or Proposition 207) or the equivalent law shall not be sought by the city from any person as a condition of approving or processing any application seeking regulatory approval. The city shall not consider asking a property owner who requests a land use change that requires action by the city to waive the ability to file a claim for diminished value under Proposition 207. The city cannot require the applicant to sign such waivers, consider the application incomplete without the waiver or condition approval upon the receipt of a signed waiver of rights of claim or other equivalent covenants without punitive consequences.